

6. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against Salem related to the above-captioned investigation that are pending before the Enforcement Bureau as of the date of this Consent Decree **ARE DISMISSED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Christopher J. Henderson, Executive Vice President, General Counsel, Salem Media Group, Inc., 4880 Santa Rosa Road, Camarillo, California 93012, and to Kathleen A. Kirby, Wiley Rein, LLP, 1776 K Street NW, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Salem Media Group, Inc.)
File No.: EB-IHD-17-00025424
Acct. No.: 202032080015
FRN: 0005185103

CONSENT DECREE

By the Chief, Enforcement Bureau:

1. The Federal Communications Commission (FCC) has a longstanding goal of protecting consumers by ensuring that the public knows when certain program material is "live," rather than taped, filmed, or recorded. Specifically, any taped, filmed, or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, must be identified by broadcast licensees as taped, filmed or recorded.4 Failing to do so could mislead the public that a show perceived as live is actually prerecorded. The Enforcement Bureau of the FCC and Salem Media Group, Inc. (Salem), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether certain of Salem's broadcast radio stations violated section 73.12085 of the Commission's rules (Rules) in connection with the broadcast of previously recorded program material. As set forth herein, to resolve this matter, Salem agrees to implement a compliance plan and pay a \$50,000 civil penalty. This action will send a signal to the industry that the Commission remains vigilant in its duty to ensure that licensees adhere to the live broadcasting rule.

I. DEFINITIONS

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
(a) "Act" means the Communications Act of 1934, as amended.6
(b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
(d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
(e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Salem is subject by virtue of its business activities, including but not limited to the Live Broadcast Rules.
(f) "Complaint" means any third-party complaint alleging violation of the Live

4 47 CFR § 73.1208.

5 Id.

6 47 U.S.C. § 151 et seq.

Broadcast Rules received by the Commission or Bureau as of the Effective Date.

- (g) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 12.
- (h) “Covered Employees” means all employees and agents of Salem who perform, or supervise, oversee, or manage the performance of, duties that relate to Salem’s responsibilities under the Communications Laws, including the Live Broadcast Rules.
- (i) “Effective Date” means the date by which both the Bureau and Salem have signed the Consent Decree and the Bureau releases an Adopting Order.
- (j) “Investigation” means the investigation commenced by the Bureau in EB-IHD-17-00025424 related to the Live Broadcast Rules.
- (k) “KRLA” means radio broadcast station KRLA, Glendale, California (Facility ID No. 61267).
- (l) “Live Broadcast Rules” means section 73.1208 of the Rules⁷ and other provisions of the Act, the Rules, and Commission orders related to the broadcast of taped, filmed, or recorded program material in which time is of special significance or which affirmatively attempts to create the impression that it is occurring live.
- (m) “LOI” means the Letter of Inquiry issued by the Bureau to New Inspiration (of which Salem is the ultimate parent) on December 11, 2017, in connection with potential violations of the Live Broadcast Rules
- (n) “New Inspiration” means New Inspiration Broadcasting Company, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (o) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Salem to implement the Compliance Plan.
- (p) “Parties” means Salem and the Bureau, each of which is a “Party.”
- (q) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (r) “Salem” means Salem Media Group, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest that hold a radio station license granted or continued in force under authority of the Communications Act.

II. BACKGROUND

3. Under section 73.1208 of the Rules,⁸ licensees are required to disclose that material is prerecorded when “time is of special significance, or . . . [when] an affirmative attempt is made to create the impression that it [i.e., the program material] is occurring simultaneously with the broadcast.”⁹

4. The Commission received a Complaint in August 2017, alleging that KRLA broadcast the call-in show, *HealthLine Live* (Show), as “live” but it was actually prerecorded.¹⁰ KRLA is licensed

⁷ 47 CFR § 73.1208.

⁸ *Id.*

⁹ 47 CFR § 73.1208(a).

¹⁰ Complaint filed by Rabbi Sheldon Pennes, No. 1849224 (Aug. 14, 2017).

to New Inspiration, which is ultimately owned by Salem.¹¹ On December 11, 2017, the Bureau issued an LOI to New Inspiration, seeking more information about the complained-of programming.¹² On January 24, 2018, New Inspiration responded to the LOI, providing a narrative statement, responsive documents, and recordings of the Show (LOI Response).¹³ The Bureau thereafter issued additional inquiries to New Inspiration, to which New Inspiration responded.¹⁴

5. In its LOI Response, New Inspiration stated that the Show was taped or prerecorded; that in addition to KRLA, multiple other radio stations owned by Salem broadcast the Show and did not announce before the broadcast that the programming was taped or recorded; that at several times during the Show, the host suggested that he was taking calls from listeners and speaking with them live over the air; and that the title of the Show and the apparent interactive discussions with callers suggested to a listener that the Show was being presented live.¹⁵ The Parties subsequently agreed to enter into this Consent Decree.

III. TERMS OF AGREEMENT

6. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

7. **Jurisdiction.** Salem agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation and dismiss the Complaint. In consideration for the termination of the Investigation and dismissal of the Complaint, Salem agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use

¹¹ Federal Communications Commission, KRLA Station Search Details, https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_det.pl?Facility_id=61267 (last visited Dec. 11, 2019); New Inspiration Broadcast Company, Inc., Commercial Broadcast Stations Biennial Ownership Report (FCC Form 323), File No. 0000046349, at Sec. II.3. Organizational Chart (filed Mar. 2, 2018) <https://enterpriseefiling.fcc.gov/dataentry/api/download/draftcopy/25076f91619169b501619c106f774357>.

¹² Letter from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Christopher J. Henderson, Senior Vice President and Secretary, New Inspiration Broadcasting Company, Inc. (Dec. 11, 2017) (on file in EB-IHD-17-00025424) (LOI).

¹³ Letter from Frank R. Jazzo, Esq. and Davina S. Sashkin, Esq., Counsel to New Inspiration Broadcasting Company, Inc., Fletcher, Heald & Hildreth, PLC, to Marlene H. Dortch, Esq., Secretary, FCC, et al. (Jan. 24, 2018) (on file in EB-IHD-17-00025424).

¹⁴ E-mail from Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, to Frank Jazzo, Esq. and Davina Sashkin, Esq., Counsel to New Inspiration Broadcasting Company, Inc., Fletcher, Heald & Hildreth, PLC, et al. (May 18, 2018, 9:57 EST) (on file in EB-IHD-17-00025424) (Supplemental LOI); Letter from Frank R. Jazzo, Esq. and Davina S. Sashkin, Esq., Counsel to New Inspiration Broadcasting Company, Inc., Fletcher, Heald & Hildreth, PLC, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, et al. (June 1, 2018) (on file in EB-IHD-17-00025424); E-mail from Davina S. Sashkin, Esq., Counsel to New Inspiration Broadcasting Company, Inc., Fletcher, Heald & Hildreth, PLC, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, et al. (June 1, 2018, 14:40 EST) (on file in EB-IHD-17-00025424).

¹⁵ LOI Response at 2-3, Answer 1(c), Answer 1(a-b), Answer 2(c), Answer 2(b).

the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against Salem concerning the matters that were the subject of the Investigation, or to set for hearing the question of Salem's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹⁶

10. **Admission of Liability.** Salem admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 9 herein, that its actions with respect to the broadcast of the material referenced in the Complaint and described in paragraphs 4-5 herein violated the Live Broadcast Rules.

11. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Salem shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Salem complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Live Broadcast Rules prior to assuming his/her duties.

12. **Compliance Plan.** For purposes of settling the matters set forth herein, Salem agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Live Broadcast Rules, Salem will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, Salem shall establish Operating Procedures that all Covered Employees must follow to help ensure Salem's compliance with the Live Broadcast Rules. Salem's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Salem complies with the Live Broadcast Rules. Salem shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Live Broadcast Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Live Broadcast Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Salem's compliance with the Live Broadcast Rules. Salem shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Salem shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Salem shall establish and implement a Compliance Training Program regarding compliance with the Live Broadcast Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Salem's obligation to report any noncompliance with the Live Broadcast Rules under paragraph 13 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial

¹⁶ See 47 CFR § 1.93(b).

Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Salem shall repeat compliance training for all Covered Employees on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

13. **Reporting Noncompliance.** Salem shall report any noncompliance with the Live Broadcast Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Salem has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Salem has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

14. **Compliance Reports.** Salem shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Salem's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Live Broadcast Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Salem, stating that the Compliance Officer has personal knowledge that Salem: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraphs 13 and 14 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁷
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Salem, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Salem has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Salem has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at

¹⁷ 47 CFR § 1.16.

Christopher.Sova@fcc.gov, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

15. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 11 through 14 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

16. **Civil Penalty.** Salem will pay a civil penalty to the United States Treasury in the amount of \$50,000 within thirty (30) calendar days after the Effective Date. Salem acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).¹⁸ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Salem shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system),¹⁹ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁰

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²¹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the Account – the bill number is the Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the Account – the bill number is the Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated

¹⁸ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁹ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

²⁰ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²¹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

account has authorization to accept ACH transactions.

17. **Event of Default.** Salem agrees that an Event of Default shall occur upon the failure by Salem to pay the full amount as described in paragraph 16 on or before the due date specified in this Consent Decree.

18. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the civil penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the civil penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Salem.

19. **Waivers.** As of the Effective Date, Salem waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Salem shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Salem nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Salem shall waive any statutory right to a trial *de novo*. Salem hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²² relating to the matters addressed in this Consent Decree.

20. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

21. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

22. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Salem does not expressly consent) that provision will be superseded by such Rule or order.

23. **Successors and Assigns.** Salem agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

25. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

26. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

²² See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

27. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

28. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Christopher J. Henderson
Executive Vice President, General Counsel
Salem Media Group, Inc.

Date